

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DOUGLAS E. THOMPSON, SR.)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 03-210-SLR
)	
JOHN E. POTTER, POSTMASTER)	
GENERAL, UNITED STATES POSTAL)	
SERVICE,)	
)	
Defendant.)	

Douglas E. Thompson, Newark, Delaware. Plaintiff, pro se.

Patricia C. Hannigan, Assistant United States Attorney,
Wilmington, Delaware. Counsel for Defendant.

MEMORANDUM OPINION

Dated: June 25, 2004
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Douglas E. Thompson filed the present complaint pro se on February 21, 2003, under Title VII of the Civil Rights Act of 1964, alleging employment discrimination on the basis of race and sex against the United States Postal Service. (D.I. 1) Equitable and other relief are also sought under 42 U.S.C. § 2000e-5(g). (Id.) The court has jurisdiction over plaintiff's claims pursuant to 42 U.S.C. § 2000e-5.

Presently before the court is defendant's motion for summary judgment on the basis that plaintiff's EEOC formal complaint was filed out of time. (D.I. 30) Because the court finds that plaintiff failed to comply with the statutory and regulatory requirements for bringing suit, defendant is entitled to summary judgment.

II. BACKGROUND

Plaintiff is an African-American employed as a Mail Handler at the Main Post Office ("MPO") facility in Newark, Delaware. Plaintiff alleges that a discriminatory act occurred on August 7, 2001, and he filed charges with the Postal Service Equal Employment Opportunity Office ("EEO") on the same date. (D.I. 2) The EEO responded on August 8, 2001, and requested that plaintiff provide information for pre-complaint counseling. That information was received by the EEO on August 30, 2001. Plaintiff agreed to participate in mediation rather than the

standard thirty day pre-complaint counseling. (D.I. 2)

On December 6, 2001, the EEO issued a notice that informed plaintiff of his right to file a formal complaint within fifteen calendar days of receipt. (D.I. 32, ex. B) The notice clearly informed plaintiff that the formal complaint should be filed with the EEO. (Id.) Plaintiff received the EEO notice on December 10, 2001, therefore, his formal complaint was due by December 26, 2001.

On December 11, 2001, the day after he received the EEO notice of right to file a formal complaint, plaintiff filed a motion for an emergent ex parte formal hearing with the United States Equal Employment Opportunity Commission ("EEOC"). Plaintiff asserts that he filed this request because he had "concerns about not receiving the appropriate form and the 'administrative time limits' of his complaint." Plaintiff also asserts that he contacted the EEOC by telephone and was told to send his formal complaint directly to the EEOC. On January 4, 2001, the EEOC rejected plaintiff's request for an ex parte formal hearing, correctly indicating the EEOC did not have jurisdiction over the complaint and had no authority to conduct an ex parte formal hearing. (D.I. 2, ex. J) The EEOC letter also stated that, because

the agency's time limits for completing pre complaint counseling have expired, you may file your formal complaint with the Postal Service. If the Postal Service dismisses your complaint, then

you will have the right to file an appeal to the EEOC Office of Federal Operations in Washington, D.C. That office would make a decision as to whether there is a valid settlement agreement based upon your and the agency's written submissions.

(Id.)

Plaintiff filed suit in this court on January 7, 2002. Thompson v. United States Postal Service, Civ. No. 02-020-SLR (D. Del. Oct. 29, 2002). Plaintiff then filed on January 10, 2002, a formal complaint with the EEO. (D.I. 32, ex. D) Consequently, plaintiff's formal complaint was filed well after the time had expired for filing of a formal complaint.

On April 12, 2002, the EEO issued a determination representing the Postal Service's final decision on plaintiff's formal complaint. (D.I. 32, ex. F) Pursuant to 29 C.F.R. § 1614.106, the EEO dismissed plaintiff's complaint on the grounds that it was untimely. (Id.) In that determination, plaintiff was informed that he had the right to either file a civil action in district court within 90 days or that he could first appeal that EEO's decision to the EEOC. If he chose to appeal to the EEOC, plaintiff was informed that he must do so within 30 days. Thereafter, if he received an unfavorable determination he could file a civil action within 90 days of receipt of the EEOC decision or, if no decision is made on the appeal within 180 days, he may initiate a civil action. (Id.) On August 23, 2002, the EEOC received plaintiff's appeal of the EEO's dismissal of

his formal complaint.¹ (D.I. 23, ex. G)

Meanwhile the civil action filed in this court was proceeding. Defendant filed a motion to dismiss the complaint on March 28, 2002. Plaintiff filed an answer brief on May 3, 2002. On October 29, 2002, the court granted defendant's motion for summary judgment finding that plaintiff did not exhaust his administrative remedies. Thompson v. United States Postal Service, Civ. No. 02-0020-SLR (D. Del. Oct. 29, 2002). The court, however, expressly reserved that it may modify its order if plaintiff confirmed that "his formal complaint was accepted by the Postal Service and is still pending." Id. at 8.

On November 12, 2002, plaintiff responded to that order showing that a formal complaint was filed with the Postal Service and that he had received a final decision in those proceedings on April 12, 2002. Plaintiff further indicated that he had filed an appeal from the decision issued by the Postal Service with the EEOC. See Thompson v. United States Postal Service, Civ. No. 02-0020-SLR (D. Del. Dec. 12, 2002).

The EEOC issued a final decision on plaintiff's appeal from the EEO's dismissal of his formal complaint on November 27, 2002. The EEOC dismissed plaintiff's appeal because, on January 7,

¹Although the form was hand dated by plaintiff on April 15, 2002, the form is stamped as received by the EEOC on August 23, 2002. Pursuant to 29 C.F.R. § 1614.402(a), plaintiff's appeal to the EEOC from the EEO decision was due by May 12, 2002.

2002, he had already filed suit in this court. Relying upon 29 C.F.R. § 1416.409, the EEOC determined that it was required to dismiss plaintiff's appeal.²

On December 2, 2002, defendant responded to this court's October 29, 2002 order, stating that plaintiff had a pending appeal before the EEOC but that he could not show that his formal complaint was timely filed. Neither party endeavored to inform the court of the November 27, 2002 EEOC decision on plaintiff's appeal. The court issued an order on December 12, 2002 which dismissed plaintiff's complaint without prejudice pending the outcome of his EEOC appeal. Thompson v. United States Postal Service, Civ. No. 02-0020-SLR (D. Del. Dec. 12, 2002).

Plaintiff filed the complaint in the instant case on February 21, 2003. (D.I. 2) On February 19, 2004, defendant filed the present motion for summary judgment. (D.I. 34) Defendant contends that he is entitled to summary judgment as plaintiff failed to pursue his administrative remedies in a timely manner.

III. STANDARD OF REVIEW

The Third Circuit instructs that timeliness of exhaustion requirements under Title VII are best analyzed under the Rule 12(b)(6) standard for failure to state a claim. See Robinson v.

²As noted above, however, the EEOC could also have dismissed the appeal for being untimely.

Dalton, 107 F.3d 1018, 1022 (3d Cir. 1997). In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n.6 (3d Cir. 1997); Urrutia v. Harrisburg County Police Dep't., 91 F.3d 451, 456 (3d Cir. 1996). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

IV. DISCUSSION

Title VII establishes the exclusive remedy for federal employees and postal workers who allege discrimination in the workplace. 42 U.S.C. § 2000e-16 (2004). Under EEOC regulations,

an aggrieved employee must initiate contact with an agency counselor within 30 days of "the effective date of an alleged discriminatory personnel action, or the date that the aggrieved person knew or reasonably should have known of the discriminatory event or personnel action." 29 C.F.R. § 1613.214(a)(1)(i). A formal EEOC complaint must then be filed "within 15 calendar days after the date of receipt of the notice of the right to file a complaint." Id. at § 1613.214(a)(1)(ii). Finally, to file a civil action the employee must do so either within 30 days of the receipt of notice of final agency action or within 180 days of filing the complaint if the agency has not reached a decision. 29 C.F.R. § 1613.281.

The undisputed facts of record demonstrate that plaintiff did not comply with Title VII's statutory and regulatory framework for complaints by postal service employees. Plaintiff received notice on December 10, 2001 of his right to file a formal complaint with the EEO and of the fifteen day calendar time limit. Plaintiff failed to file the formal complaint with the EEO until January 11, 2002, instead pursuing other remedies not available to him, including filing suit in district court and a request for an ex parte formal hearing with the EEOC in Philadelphia. Consequently, unless the court finds that principles of equitable tolling should apply, plaintiff's civil action is time barred.

"Equitable tolling functions to stop the statute of limitations from running where the claim's accrual date has already passed." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1387 (3d Cir. 1994). With respect to Title VII's time limitations, equitable tolling is consistent with the "goal of interpreting humanitarian legislation in a humane and commonsensical manner so as to prevent unnecessarily harsh results in particular cases." Id. Further, Title VII's time limitations are considered to be analogous to a statute of limitations rather than a jurisdictional requirement. Id.

The Third Circuit recognizes three primary circumstances in which equitable tolling should apply to Title VII claims: "(1) where the defendant has actively misled the plaintiff respecting the plaintiff's cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum." Id. Plaintiff has not explicitly asserted any basis for equitable tolling. Mindful, however, of the court's obligation with respect to pro se plaintiffs at this stage in litigation, the court will consider whether any of these circumstances might apply based upon the alleged facts.

There is nothing in the record to suggest that defendant actively misled plaintiff with respect to the filing of the

formal complaint with the EEO. To the contrary, the record shows the opposite to be true as the EEO notice informed plaintiff of his rights and the requisite time limitations. There is also nothing in the record to suggest that there was some extraordinary explanation for plaintiff's failure to file a timely formal complaint. Consequently, the only remaining consideration is whether plaintiff timely asserted his rights but in the wrong forum.

The Third Circuit cites to Burnett v. New York City Central Railroad Co., 380 U.S. 424 (1965), for the proposition that a time limitation may be tolled where a plaintiff has asserted a claim in the wrong forum. Oshiver, 38 F.3d at 1387. In Burnett, a plaintiff filed suit in state court asserting a claim under the Federal Employers Liability Act, 45 U.S.C. § 56. Although the state court had jurisdiction, it dismissed the action due to improper venue because of a unique venue requirement for railroads. Eight days later, the plaintiff filed a complaint in the United States District Court for the District of Ohio. By the time of that filing, however, the statute of limitations had run. The Supreme Court found that, under those circumstances and in light of the statute's intended remedial purpose and liberal federal policy with respect to venue, equity would toll the limitations. Burnett, 380 U.S. at 435.

The record does show that immediately after receiving the

EEO notice on December 10, 2001, plaintiff filed something with the EEOC in Philadelphia. Plaintiff asserts that the December 10, 2001 EEO letter was late and did not include a copy of a particular form. (D.I. 2 at ¶ 12(i)) Plaintiff also asserts that he contacted the EEOC office in Philadelphia because he had "concerns about not receiving the appropriate form and the 'administrative time limits' of his complaint." (D.I. 2 at ¶ 12(j)) Other than what can be surmised from the EEOC's January 4, 2002 letter and plaintiff's complaint in this court, it is unclear what the contents of his communication to the EEOC were, as no copy of that communication is present in the record.

In the case at bar, the court finds that equity does not demand the time limitations to be tolled. Here the record indisputably shows that plaintiff was aware that he needed to file within fifteen days. Plaintiff was also aware that the EEO was the appropriate place for him to file his complaint. Notwithstanding this clear notice, plaintiff chose to circumvent the regulatory framework, thereby frustrating the administrative goal of encouraging the intra agency resolution of employment disputes. Consequently, the court finds that plaintiff fails to state a claim upon which relief can be granted because he failed to timely comply with the statutory and regulatory requirements for complaints under Title VII.

IV. CONCLUSION

Having concluded that plaintiff has failed to state a claim upon relief can be granted, the court will grant defendant's motion for summary judgment. An order consistent with this opinion shall issue.

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Plaintiff,)	
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v.)	Civ. No. 03-210-SLR
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JOHN E. POTTER, POSTMASTER)	
GENERAL, UNITED STATES POSTAL)	
SERVICE,)	
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Defendant.)	

O R D E R

At Wilmington this 25th day of June, 2004, consistent with
the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Defendant's motion for summary judgment is **granted**.
(D.I. 30)
2. Defendant's motion for summary judgment or, in the
alternative to dismiss, is **denied as moot**. (D.I. 34)
3. The Clerk of the Court is directed to enter judgment
against plaintiff and in favor of defendant.

Sue L. Robinson
United States District Judge